



**2nd ANNIVERSARY OF THE INDIVIDUAL APPLICATION PROCEDURE
BEFORE THE CONSTITUTIONAL COURT OF TURKEY**

**Antalya, Turkey
27-28 November 2014**

Constitutional Court of Turkey

**Presentation by Mr Gianni Buquicchio
President of the Venice Commission**

“The role of the Venice Commission in promoting individual complaint procedures”

[...]

President of the Constitutional Court,
Your Excellences, Honourable judges,
Ladies and Gentlemen,

It is with great pleasure that I am here in Antalya today, to represent the Venice Commission of the Council of Europe on the occasion of the Second Anniversary of the individual complaints procedure before the Constitutional Court of Turkey.

The Venice Commission has always supported the introduction of individual complaint procedures before the constitutional courts of its member States.

It has done so because it is convinced that this procedure can be an effective domestic remedy for the violation of fundamental human rights and therefore tends to reduce the number of cases that come before the European Court of Human Rights against countries that have introduced it.

Ladies and Gentlemen,

The protection of human rights must begin at the domestic level and this is where the role of the constitutional court is crucial.

States, for the most part, secure the protection of human rights through their constitutions and, since the constitutional court is known as the guarantor of the constitution, protecting constitutionally guaranteed rights, it is important that this court be able to carry out its task effectively.

The solution of human rights issues on the national level is crucial for the functioning of the human rights mechanism in Europe. This is not a new issue but it was underlined again in the 2012 Brighton Declaration.

In its 2010 study on individual access to constitutional justice, the Venice Commission provided a blueprint for designing individual complaints, living up to the high standards of the European Court of Human Rights for recognition as an “effective remedy”, which needs to be exhausted according to Articles 15 and 35 of the Convention.

We were pleased to be able to provide a draft of the study to our Turkish friends when they prepared the legislation on individual access to the Constitutional Court.

Ladies and Gentlemen,

Already in 2004, the Constitutional Court of Turkey promoted the introduction of such a procedure and we supported the Court through an opinion of the Venice Commission. However, this first attempt failed due to resistance from other high courts in Turkey.

Turkey did however manage to introduce the individual complaints procedure before its Constitutional Court in 2010, following a referendum on amendments to its Constitution.

The reform package that was introduced in 2010 eventually opened the doors of the Constitutional Court of Turkey to individual applications.

As in 2004, the Venice Commission supported this reform through an opinion, adopted in October 2011 on the Law on the Constitutional Court.

This Law finally led to the introduction of the constitutional complaint in September 2012 but the Court itself also seriously prepared for this new procedure.

In order to stem the flood of complaints that could arise through this new procedure, the Constitutional Court of Turkey prepared thoroughly.

You increased the Court's staff and trained its rapporteur judges who were sent on study visits to Germany, Korea, Spain and South Africa as well as to the European Court of Human Rights to learn more about other courts' approach to the application of human rights.

The Constitutional Court of Turkey has also introduced filters to this procedure, which includes the creation of a commission that screens applications and that can decide (unanimously) whether an application is inadmissible.

The Court also has the means to filter abusive or vexatious complaints.

It may decide that an application is inadmissible if it is manifestly ill-founded or if it has no bearing on the interpretation or application of the Constitution or on the scope of fundamental rights and the applicant did not suffer any significant damage.

An applicant who clearly abused the right to lodge an individual complaint may be fined and ordered to pay the costs that arise from the proceedings.

I welcome that the European Court of Human Rights considered the individual appeal to be an effective remedy.

In the *Hasan Uzun v. Turkey* case of 30 April 2013, the Court held that the individual complaints procedure before the Constitutional Court of Turkey afforded, in principle, an appropriate mechanism for the protection of human rights and fundamental freedoms.

I am pleased that the Venice Commission was also able to help the Constitutional Court of Turkey in achieving this success.

Ladies and Gentlemen,

Whether this high level of human rights protection can be maintained, will, however, depend on how the Constitutional Court deals with these cases over time.

The important role played by constitutional courts in protecting constitutionally guaranteed rights was effectively demonstrated by the Constitutional Court of Turkey in its recent cases such as on the Twitter ban.

In this ground-breaking case, the Constitutional Court unanimously found that the ban was in breach of the principle of freedom of expression and of individual rights guaranteed by the Constitution of Turkey and therefore unconstitutional.

By introducing the individual complaints procedure, Turkey has further strengthened the protection of fundamental human rights contained in its Constitution.

President Kiliç,

You and your judges have effectively shaped this Court to be a bulwark against the excesses of the other state powers.

I am grateful to the charismatic and energetic President of the Constitutional Court of Turkey for the work done.

It is thanks to presidents of constitutional courts such as Mr Kiliç who believe in the independence of the judiciary, in the importance of the rule of law and in upholding the basic principles of the protection of human rights – that effective remedies, such as the individual complaints procedure, can be ensured on a domestic level through constitutional courts.

I am confident that the Constitutional Court of Turkey can remain a firm defender of democracy, human rights and the rule of law during difficult times, even at moments when serious pressure is exerted against the Court.

President Kilic,

You – and each of the judges – have a very high responsibility. As Judges of the Constitutional Court, you do not shape State policy but it is your task to remove excessive restrictions on human rights and to ensure the separation of powers.

This is the way to guarantee that State policy and legislation remain within the democratic constitutional framework.

For this reason, it's my great pleasure to award the Venice Commission's Pro Merito Medal to Mr Hasam Kilic, President of the Constitutional Court of Turkey, and - through him - to all the judges of

the Court, for the prominent role played in support of the Rule of Law, Human Rights and Democracy in Turkey.

I wish for this Court to continue its important role as the guarantor of the Constitution and protector of human rights and that it continue to act as a bulwark against the excesses of the other state powers.

Ladies and Gentlemen,

I would like to end by thanking the Constitutional Court of Turkey for organising this event and I would like to wish us very fruitful and inspiring discussions!

Thank you for your attention.